

AGREEMENT

WHEREAS, the City of Atlanta, is a municipal corporation formed under the laws of the State of Georgia ("City");

WHEREAS, the City has taken necessary steps, including sending a notice of interim control dated May 11, 2017, to designate a building and premises located at 141 Walton Street ("141 Walton") and a building and premises located at 152 Nassau Street ("152 Nassau") as a Landmark Building or Site (collectively "the LBS designations") pursuant to its Historic Preservation Ordinance, Atlanta City Code at Sec. 16-20.001 *et. seq* (the "HPO"); and

WHEREAS, the LBS Designations are currently pending as "held papers" before the Atlanta City Council as Ordinances 17-O-1447 for 141 Walton and 17-O-1448 for 152 Nassau (the "Pending LBS Designation Ordinances"); and

WHEREAS, Atlanta Partners LLC, is a limited liability company formed under Missouri law ("AP") and a successor to any and all interests of Skytower Partners, an entity which filed Special Administrative Permit Number 16-010 ("SAP-16-010") with the City of Atlanta Office of Zoning & Development ("OZD") on January 14, 2016; and

WHEREAS, AP contends its rights have vested to redevelop the buildings (including demolition) and premises of 141 Walton and 152 Nassau, notwithstanding the LBS designations, on account of the filing of SAP-16-010 with OZD prior to the notice of interim control. The City contends otherwise; and

WHEREAS, AP contends that it has vested rights to redevelop 0 Walton Street, 0 Nassau Street, 152 Nassau Street, 145 Walton Street, 135 Walton Street and 141 Walton Street ("the Properties") based on SAP-16-010, even though the City has taken no action to designate such buildings and premises for any category of protection under the authority of the HPO; and

WHEREAS, the OZD took certain actions in the processing of amendments to SAP-16-010 submitted by AP after May 11, 2017 which AP claims interfere with its vested rights. AP has filed an appeal to the City of Atlanta Board of Zoning Adjustment (the "BZA"), an administrative body exercising quasi-judicial authority, to challenge such actions; and

WHEREAS, the BZA appeal is enumerated V-17-181 (the "BZA Appeal"); and

WHEREAS, on behalf of the property owners of 141 Walton and 152 Nassau, certain letters making and reserving constitutional objections were filed concerning the Pending LBS Designation Ordinances.

The City and AP (from time to time the "Parties") now agree to compromise their rights by entering into this Agreement in the manner set forth herein:

1. The City shall not take final legislative action to approve or deny the Pending LBS Designation Ordinances except as otherwise provided for herein.

2. AP agrees that the Pending LBS Designation Ordinances shall remain pending, notwithstanding anything to the contrary in City Code, including but not limited to the HPO and City Code Sec. 2-407 (Quadrennial relegation of pending legislation). Concerning City Code Sec. 2-407, AP agrees, and waives any claim to the contrary, that the City may re-introduce the Pending LBS Designation Ordinances to preserve the status quo as it existed prior to said relegation with such newly introduced ordinances continuing as the Pending LBS Designation Ordinances. All filings submitted by AP to the City shall be considered part of the legislative record.

3. The City's Urban Design Commission's Executive Director shall not nominate the property at 135 Walton Street ("135 Walton") as a Landmark Building or Site for the period when this Agreement is in effect. For the purposes of clarity and the avoidance of doubt, it is the specific intention of the Parties that this Agreement apply to all Properties in which AP had any contractual interest prior to the introduction of Pending LBS Designation Ordinances so that there could be complete relief available to both Parties which is acceptable to them without resort to legal action and that complete relief would not be available to AP if the City designated the property at 135 Walton for LBS status.

4. AP agrees not to demolish any building, including portions thereof, that is the subject of the Pending LBS Designation Ordinances until the satisfaction of the conditions set forth herein has resulted in the issuance of a demolition permit allowing such actions and a land disturbance permit or foundation permit has issued to build the hotel set forth in paragraph 6, as set forth below. For the period of this Agreement, AP also agrees not to demolish 135 Walton.

5. The BZA Appeal shall be stayed, subject to BZA consent, provided however that the Parties agree that if the BZA should hear and decide the BZA Appeal, that such hearing shall occur prior to the date that the Zoning Committee will consider the Pending LBS Designation Ordinances so that the decision of the BZA can be communicated to the Zoning Committee through an appropriate official of the City's choosing

6. AP agrees to submit to the City an application for a special administrative permit by June 30, 2018 to build at least a 10-story hotel ("Hotel SAP") that will encompass some or all of Properties. AP intends to develop a hotel associated with a unique Wyndham brand and have a development cost in excess of approximately one hundred million dollars (\$100,00,000). Any change from the unique Wyndham brand shall be subject to City approval which shall not be unreasonably withheld. AP agrees that the Hotel SAP shall not propose any eating and drinking establishment on the Properties other than within the hotel. The City agrees that approval and issuance of the Hotel SAP application (including a fully executed document which indicates that AP has the permission and the right to file any necessary demolition and building permit applications with the Office of Buildings (a/k/a the "golden ticket")) (the "Approved Hotel SAP") will vest the rights of AP to seek permits from the Office of Buildings to construct the approved Hotel SAP project immediately upon its approval and issuance, including without limitation the right to demolish the buildings at 141 Walton and 152 Nassau upon the issuance of the demolition permit(s) and a land disturbance permit or foundation permit has issued to build a hotel, as set forth below.

7. If the City approves the Hotel SAP by July 30, 2018, AP shall by January 1, 2019 submit to the City an application for a demolition permit for the existing structures on 141 Walton and 152 Nassau and an application for a land disturbance or building permit for the construction of a hotel substantially consistent with the approved Hotel SAP.

8. If the City issues the demolition permit for 141 Walton and 152 Nassau within 30 days of application, AP will dismiss the BZA appeal upon demolition of the structures. AP will not demolish the existing structures on 141 Walton and 152 Nassau until it has obtained a land disturbance or foundation permit for the approved Hotel SAP project. The City agrees that AP will have made a substantial expenditure of funds in creating and filing the Hotel SAP in reliance upon the City's assurance that the demolition permit would issue if the Hotel SAP was approved and the demolition permit meets the applicable City Code criteria. Because the review, approval and issuance of the demolition permit is in the control of the City, the demolition permit is not subject to revocation in the event that the City subsequently finds that permit was issued in error due to any technical defect in the demolition permit application or plans and the City shall work in good faith with AP to correct such errors, however such errors shall be determined.

9. If the Hotel SAP or the demolition permit applications are not approved by the City by the deadlines established herein or as they may be extended pursuant to paragraph 13, then AP may be heard on its BZA Appeal within 45 days of deadline(s) expiration.

10. If the Hotel SAP or demolition permit applications are not approved by the City, the City Council may take a final vote on the Pending LBS Designation Ordinances after the BZA Appeal.

11. The Parties reserve all rights to appeal any adverse decision by the BZA. AP reserves the right to challenge any approval of the Pending LBS Designation Ordinances.

12. Until the BZA decides the BZA Appeal or the City takes final legislative action (approval, denial, or "file") on the Pending LBS Designation Ordinances, neither party may seek legal or equitable relief in Fulton Superior Court except to enforce the terms of this Agreement.

13. Any deadline set forth herein may be extended by the Parties by mutual written consent.


14. Execution of this Agreement is within the authority of the City Attorney pursuant to Sec. 2-404 of the City Code (settlement of claims and suits for sums not to exceed \$500) because AP hereby waives any claim for any monetary damages or attorney fees which exist as to date and through the date it dismisses its BZA Appeal, provided however that should the failure of the conditions of this Agreement by the City produce an outcome where it is necessary to institute legal challenges to the designation of 141 Walton and 152 Nassau as LBS buildings under the HPO as the result of the adoption of any Pending LBS Designation Ordinance, AP reserves the right to seek monetary damages and attorney fees arising after any approval of the Pending LBS Designation Ordinances in the civil actions which are filed to prosecute those challenges.

15. With respect to any action that may be filed in the Superior Court of Fulton County to enforce this Agreement, the Parties agree that such claims survive the dismissal of the BZA Appeal and the final action of the City Council on the Pending LBS Designation Ordinances.

16. All rights and obligations under this Agreement or any lawful permit issued hereafter are fully assignable and bind future successors-in-interest to the Properties.

EXECUTED ON THE 6TH DAY OF Nov, 2017 AND AGREED TO BY

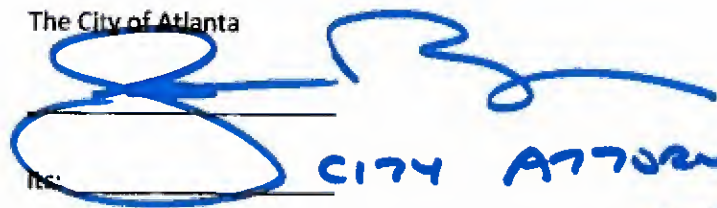
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